

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: January 21, 2005

TO : B. Allan Benson, Regional Director
Region 27

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Hospital Cooperative Laundry
Case 27-CA-19349-1

This Section 8(a)(1) case was submitted for advice as to whether the Employer's dress code rule, requiring employees to wear an Employer-issued uniform shirt at certain times, is facially unlawful under Lafayette Park Hotel¹ and Lutheran Heritage Village-Livonia² because it effectively prohibits employees from wearing nonuniform shirts with printed Union slogans at those times. The Region has already determined to issue complaint alleging that the Employer discriminatorily allowed employees to wear nonuniform shirts at those times while not allowing them to wear T-shirts with a printed Union slogan. We conclude that, since the Board has not held that employees have a Section 7 right to wear a printed union slogan shirt in place of a uniform shirt, as opposed to the Section right, absent special circumstances, to wear union slogan shirts when there is no uniform requirement or to wear union insignia added to a uniform, the Employer's dress code rule is not unlawful on its face.³

Briefly, the Union represents a unit of employees at the Employer's facility, where it launders linens for a

¹ 326 NLRB 824 (1998), enfd. 203 F. 3d 52 (D.C. Cir. 1999).

² 343 NLRB No. 75 (November 19, 2004).

³ [FOIA Exemption 5

number of hospitals. The Employer has a written "Dress Code" that provides in relevant part:

HCL is a professional health care linen supply company. We have visitors touring the plant frequently, and we always want to make the right impression. The following dress codes must be followed:

Employees are required to wear uniforms which are provided by HCL. Upon leaving employment with HCL, you are required to return your most recently issued set(s).
. . .

Employees are issued blue uniform shirts; they wear their choice of pants. Employees have been allowed to wear Union pins and insignia on their uniform shirts and not be in violation of the dress code.

There are two shifts each day, the day shift and afternoon/evening shift. Employees are officially required to wear their uniform shirts on both shifts on weekdays, Mondays through Fridays; on the weekends, employees on both shifts are allowed to wear other shirts. There is evidence that despite the Employer's policy requiring uniform shirts on weekdays, on the Friday afternoon shift employees have been and are now allowed to wear other shirts.

On the afternoon of Friday, November 5, in a show of Union support in the face of an RD petition, approximately 15 afternoon shift employees wore red T-shirts with the message "UNITE HERE" written on them. The Employer required each of the employees to remove the T-shirts or cover them up with the Employer's standard uniform shirt. There is no evidence that employees had ever attempted to wear Union T-shirts in the past and the Employer acknowledges that it forbade employees from wearing them on November 5 and that it continues to forbid them from wearing them on weekdays, including the Friday afternoon shift. The Region has concluded that the Employer discriminatorily prohibited the afternoon shift employees from wearing the Union shirts on Friday afternoon, November 5, while allowing employees to wear other, non-uniform, shirts on other Friday afternoons.

We conclude that the Employer's policy, requiring uniform shirts to be worn on weekdays, is not unlawful on its face, as there is no established Section 7 right to wear non-uniform shirts with printed union slogans in place of uniform shirts. While there is a general Section 7 right to wear, absent special circumstances, clothing, pins, or

buttons with union slogans,⁴ the cases finding such a right involve either slogan clothing where there is no "dress code" requiring uniforms to be worn⁵ or where the pins or buttons are worn as an addition or attachment to a uniform or other clothing.⁶ Thus, given the absence of existing precedent and the fact here that employees are allowed to wear Union pins or buttons on their uniform shirts, we conclude that the Employer's policy requiring

⁴ Republic Aviation Corp. v. NLRB, 324 U.S. 793, 801-03 (1945).

⁵ See, e.g., Escanaba Paper Co., 314 NLRB 732, 733, 737-38 (1994), *enfd.* 73 F.3d 74, 79 (6th Cir. 1996)(employer policy banning T-shirts bearing "disrespectful" messages implies that there was no policy requiring uniforms; employer unlawfully banned shirts bearing union slogans); Pathmark Stores, Inc., 342 NLRB No. 31, slip op. at 1-3 (June 30, 2004)(employer had no uniform policy; while there is a general Section 7 right to wear union attire, a ban on shirts with a particular message was justified by "special circumstances"); Bell-Atlantic-Pennsylvania, 339 NLRB 1084, 1086-87 (2003), *affd.* 99 Fed. Appx. 233 (D.C. Cir. 2004)(same). While the employer in Quantum Electric, Inc., 341 NLRB No. 146, slip op. at 5, 8, 11-12 (June 3, 2004) issued company shirts with the employer's printed name, the employer apparently did not require employees to wear those shirts as a uniform; therefore, employer violated 8(a)(1) by discharging employee for wearing a union-slogan T-shirt in violation of its clothing policy prohibiting shirts with text or graphics other than the company-issued shirts.

⁶ See, e.g., Evergreen Nursing Home, 198 NLRB 775, 778-779 (1972)(nurses' uniforms); Nordstrom, Inc., 264 NLRB 698, 700-02 (1982)(salesmens' suits); Escanaba Paper Co., 314 NLRB at 733.

Cf. Casa San Miguel, 320 NLRB 534, 540 (1995)(employer lawfully refused to allow employee to wear required uniform smock to which she had added a union slogan printed directly on the fabric).

employees to wear uniform shirts at certain times is not unlawful on its face.

B.J.K.